IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 780 OF 2004

Shailesh H. Bajaj ... Applicant

versus

State of Maharashtra & anr. ... Respondents

...

Mr. P.D. Desai, for the Applicant.

Mr. S.R. Shinde, A.P.P., for Respondent No.1.

Mr. Girish Kedia for Respondent No. 2.

...

CORAM : A.M.KHANWILKAR,J.

11th January 2005

P.C.:

. Heard Counsel for the parties. By this petition, the Applicant prays for quashing of the criminal action instituted by the Respondent No. 2 for offence punishable under section 138 of the Negotiable Instruments Act. The only ground canvassed before this Court is that the entire amount pertaining to the dishonour of cheque has been discharged and paid to the complainant along with interest. If it is so, the criminal action

ought to be quashed. To buttress this submission, reliance is placed on the decision of this Court reported in 1998(4) LJ 832 (NOC), as well as the decision of the Apex Court in the case of O.P. Dholakia v. State of Haryana and another, reported in 2000 S.C.C. (Cri) 310. The Court below has taken the view that merely because some payment has been made after institution of the complaint, that does not absolve the criminal liability of the accused. In the present case, the fact that the entire payment which is referable to the dishonoured cheques has been settled between the parties is in dispute. The Respondent complainant is not accepting the fact that the amount towards dishonoured cheques has been received, much less along with interest, as claimed by the Applicant accused. If it is so, that issue will have to be considered at the trial and appropriate orders passed, but by no standards can be ground for quashing of the criminal action. The two decisions pressed into service on behalf of the Applicant are of no avail because it appears that in both the abovesaid cases, the factum of payment and receipt of the entire dues was not in dispute. Accordingly, this petition fails. The

same is dismissed.